IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT APPEAL NO : 2106 of 1998

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 30/12/1997 in WP NO : 11552 OF 1993 on the file of the High Court.)

Between:

Chairman, Visakhapatnam Port Trust & Disciplinary Authority,

Visakhapatnam.

..... APPELLANT

AND

1 T.Ponnaiah Suri, S/o late T.V.Seshaiah, Asst. Engineer (Mechanical),
Now under reversion as Foreman(mech) and now working in Dry Dock

Section, C.E.M.E.Dept., Visakhapatnam Port Trust, Visakhapatnam.
2 Govt. of India , rep by its Secretary (not Neccessary resp.)

.....RESPONDENTS

Counsel for the Appellant : MR.K.SRINIVASAMURTHY

Counsel for the Respondent No.1: No representation

RR2: MR. MEHERCHAND NORI

The Court made the following JUDGMENT:

The Writ Appeal is filed by the appellant-2nd respondent against the order, dated 30.12.1997, in W.P.No.11552 of 1993, passed by a learned single Judge of this Court.

For the sake of convenience, the parties are referred to as they are arrayed in the writ petition.

The writ petition was filed for quashing the proceedings of the 2nd respondent-Chairman, Visakhapatnam Port Trust and Disciplinary Authority, which was affirmed by the 1st respondent-appellate authority i.e. the Government of India in its Order No. C-16018/2/93-PE/11 dated 17.5.1993.

It is the case of the petitioner that while he was working as Assistant Engineer (M) (Class-II) Mechanical Department of Visakhapatnam Port Trust, it was alleged that he demanded Rs.3,000/- on instalments from one Sri K.Ramanuj, driver for posting him as a driver on his superior officer's car and in that process, the petitioner was caught read-handed by the C.B.I Inspector. After conducting departmental enquiry, he was reverted to the post of Foreman (M) (Class-III). Aggrieved by the order of reversion, he preferred an appeal before the 1st respondent i.e. Government of India. By an order dated 17.05.1993, the 1st respondent dismissed the appeal. Hence, he moved this Court by filing Writ Petition No.11552 of 1993.

The learned single Judge, after having gone through the merits of the case, allowed the writ petition holding that the appellate authority did not consider the specific contention of the petitioner that the findings of the Enquiry Officer are not based on the evidence adduced on record. The learned single Judge himself considering the entire evidence available on record to find out whether the charge is proved or not held that both the authorities failed to consider the evidence of P.W.1.

In view of the conclusion arrived at by the learned single Judge that charge has not been proved, the Writ Petition was allowed with a direction to the appellant herein to reinstate the petitioner. Aggrieved by the same, the present Writ Appeal has been filed by the respondent.

Heard the learned counsel for the appellant-respondent.

The learned counsel for the appellant-respondent contended that the learned single Judge has no jurisdiction to analyse the evidence and this Court cannot go into the validity of the charges and also cannot appraise the evidence under Article 226 of the Constitution of India.

Nobody represented on behalf of the respondent-writ petitioner and hence, basing on the material available on record, the matter has been considered. But, however, in view of the observations made by the learned single Judge in arriving at a conclusion that the charge has not been proved by appraising evidence, we hold that the learned single Judge has no jurisdiction to go into the evidence and come to a conclusion.

Under the above circumstances, the observations made by the learned single Judge to the above effect are set aside and the matter is remanded to the appellate authority for passing appropriate orders after giving an opportunity of being heard to both the parties, within a period of eight weeks from the date of receipt of a copy of the order.

With the above observation, the Writ Appeal is partly allowed. No costs.

(T.MEENA KUMARI,J)

(S.ANANDA REDDY, J)

Dt: 09.02.2005

bsv

To

1. The Chairman, Visakhapatnam Port Trust & Disciplinary Authority, Visakhapatnam.

2. Two CD copies

This Writ Appeal is filed by the appellant-respondent against the order dismissing the W.P.No.11552 of 1993, dated 30.12.1997 by a learned single Judge of this Court.

The writ petition was filed for questioning the proceedings of the second respondent to call for the records relating to and connected with the Proceedings of 2nd respondent which were affirmed by the appellate Government of India in its order dated 17.5.1990.

It is the case of the petitioner that while he was working as Assistant Engineer (M) (Class II), Mechanical Department of Visakhapatnam Port Trust. It was alleged that on 26.12.1990 he demanded an amount of Rs.3,000/- from one K.Ramanuj, driver for posting the said person as a Driver on his Superior Officer's car and was caught read-handed by the C.B.I. Inspector and that after conducting departmental enquiry, he was issued show-cause notice and on his reply, the competent authority imposed a punishment of reversion to the post of Foreman (M) Class III from the post of Assistant Engineer (M) (Class II) vide proceedings of 2nd respondent dated 3.12.1992 and that thereafter, he preferred an appeal before respondent No.1 which was also dismissed on 17.5.1993. Hence, he moved this Court by filing W.P.No.11552 of 1993. In view of the conclusions arrived at by the learned single Judge that the charge framed against the petitioner was not proved, allowed the writ petition with a direction to respondent No.2 to reinstate the petitioner with all consequential benefits. Aggrieved by the same, appellant-respondent preferred the present writ appeal.

The learned single Judge, after having gone through the merits of the case, allowed the writ petition holding that the Appellate Authority did not consider the specific contention of the respondent-petitioner that the findings of the Enquiry Officer are not based on the evidence adduced on record. The learned single Judge, further held both the authorities failed to consider the evidence of P.W.1. Therefore, the learned single Judge himself has considered the entire evidence available on record to find out whether the charge is proved or not. In view of the conclusion arrived at by the learned single Judge that the charges have not been proved, the writ petition was allowed with a direction to the appellant herein to reinstate the respondent-petitioner. Aggrieved by the same, the present writ appeal has been filed by the appellant-respondent.

Heard the learned counsel for the appellant-respondent.

The learned counsel for the appellant-respondent contended that the learned single Judge has no jurisdiction to analyse the evidence and this Court cannot go into the validity of the charges and also cannot appraise the evidence under Article 226 of the Constitution of India.

None represent the respondents and hence, basing on the material available on record, the matter has been heard. But, however, in view of the observations made by the learned single Judge in arriving at a conclusion that the charge has not been proved by apprising evidence, we hold that the learned single Judge has no jurisdiction to apprise the evidence and came to a conclusion for proving the charges.

Under the above circumstances, the observations made by the learned single Judge to the above effect are set aside and the matter is remitted/remanded to the Appellant Authority for passing appropriate orders within a period of eight weeks from the date of receipt of a copy of the order.

With the above observation, the writ appeal is partly allowed. No costs.

(T.MEENA KUMARI, J)

(S.ANANDA REDDY, J)

DT: 09.02.2005

bsv